

House Bill 525

By: Representative Bearden of the 68th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to require the recording of certain custodial statements under certain circumstances; to
3 provide for definitions; to provide for guidelines relating to the admissibility of certain
4 custodial statements and exceptions thereto; to provide for preserving custodial statements;
5 to amend Title 35 of the Official Code of Georgia Annotated, relating to law enforcement
6 officers and agencies, so as to provide for training in recording certain custodial statements;
7 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
8 for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
12 amended by adding a new chapter to read as follows:

13 "CHAPTER 19

14 17-19-1.

15 As used in this chapter, the term:

16 (1) 'Accused' means a person less than 17 years of age.

17 (2) 'Custodial authority' means a warden, sheriff, jailer, deputy sheriff, police officer,
18 correctional officer, officer or employee of the Department of Corrections or the
19 Department of Juvenile Justice, or any other law enforcement officer having actual
20 custody of the accused.

21 (3) 'Custodial interrogation' means any interrogation regarding an alleged crime or
22 delinquent act which is conducted in a place of detention by a custodial authority.

23 (4) 'Delinquent act' shall have the same meaning as set forth in paragraph (6) of Code
24 Section 15-11-2.

(5) 'Electronic recording' means an audiotape, videotape, or digital recording.

(6) 'Place of detention' means a police station, correctional facility, holding facility for prisoners, Department of Juvenile Justice facility, or other government facility where persons are held in detention in connection with criminal charges or delinquent acts which have been or may be filed against the accused. Such term shall not include a motor vehicle.

(7) 'Serious violent felony' shall have the same meaning as set forth in Code Section 17-10-6.1.

17-19-2.

(a) All custodial interrogations of an accused shall be electronically recorded in their entirety and shall include the accused being advised of *Miranda* warnings.

(b) During the prosecution of a crime or delinquent act, an oral, written, or sign language statement of an accused made during a custodial interrogation shall be inadmissible as evidence against the accused unless the electronic recording is made available to the accused ten days prior to any court proceeding.

(c) If the court finds that the accused was subjected to a custodial interrogation in violation of subsection (b) of this Code section, any statement made by the accused during and following such custodial interrogation, even if otherwise in compliance with this Code section, shall be inadmissible as evidence against the accused.

17-19-3.

A custodial interrogation of an accused shall be inadmissible as evidence against the accused unless electronically recorded and:

(1) The accused's parent, legal guardian, or attorney is present at the time the custodial interrogation occurs; or

(2) In the case of exigent circumstances involving the accused being a suspect in a serious violent felony, an adult to be designated by either the accused, the accused's parent, legal guardian, or a child advocate is present at the time of the custodial interrogation.

17-19-4.

Notwithstanding the requirement to electronically record an accused's custodial interrogation, nothing contained in this chapter shall preclude the admission into evidence against the accused of:

(1) An interrogation conducted in a location other than a place of detention which lacks readily available electronic recording equipment;

- 1 (2) A custodial interrogation in which the accused refuses to have his or her custodial
2 interrogation electronically recorded and such refusal is electronically recorded;
3 (3) A custodial interrogation which is incomplete due to equipment failure, which failure
4 is unknown to the custodial authority;
5 (4) A custodial interrogation which is incomplete due to equipment failure, which failure
6 is known to the custodial authority, but replacement equipment was not readily available;
7 (5) An accused's spontaneous statement which is not made in response to a custodial
8 interrogation; or
9 (6) An accused's statement made during his or her processing or booking.

10 17-19-5.

11 The state shall not destroy or alter any electronic recording made of a custodial
12 interrogation until such time a conviction for any offense relating to the interrogation
13 becomes final and all direct and habeas corpus appeals are exhausted, or the prosecution
14 of the offense is barred by law."

15 **SECTION 2.**

16 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
17 agencies, is amended by adding a new Code section to the end of Chapter 1, relating to
18 general provisions for law enforcement officers and agencies, to read as follows:

19 "35-1-15.

20 The Georgia Peace Officer Standards and Training Council and the Georgia Public Safety
21 Training Center shall establish guidelines and procedures for the incorporation of training
22 materials and information in methods for electronically recording a suspect's statement
23 pursuant to Chapter 19 of Title 17 in all relevant courses for which they have responsibility
24 and oversight."

25 **SECTION 3.**

26 This Act shall become effective on July 1, 2007.

27 **SECTION 4.**

28 All laws and parts of laws in conflict with this Act are repealed.